

ASSEMBLY BILL

No. 2216

Introduced by Assembly Member Fuentes

February 18, 2010

An act to amend Section 7108.5 of the Business and Professions Code, to amend Section 3252 of the Civil Code, and to amend Sections 10262 and 10262.5 of the Public Contract Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2216, as introduced, Fuentes. Works of improvement.

(1) Existing law requires that, for private and public works of improvement, and in a public works contract, a prime contractor or subcontractor pay to any subcontractor, not later than 10 days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amount allowed the contractor on account of the work performed by the subcontractors, to the extent of each contractor's interest therein, as prescribed.

This bill would, instead, require that those amounts be paid not later than 7 days after receipt of each progress payment.

(2) Existing law requires, with regard to a contract entered into on or after January 1, 1995, in order to enforce a claim upon any payment bond given in connection with a public work, that a claimant give the 20-day public works bond preliminary notice, as provided. Existing law further authorizes a claimant, if the 20-day public works preliminary bond notice was not given as prescribed by statute, to enforce a claim by giving written notice to the surety and the bond principal, as provided, within 15 days after recordation of a notice of completion, or if no notice

of completion has been recorded, within 75 days after completion of the work of improvement.

This bill would, instead, with regard to a contract entered into on or after January 1, 2010, require that the written notice to be given to the surety and the bond principal be given prior to the completion, as defined, of the project, or recordation of a notice of completion.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7108.5 of the Business and Professions
2 Code is amended to read:
3 7108.5. (a) This section applies to all private works of
4 improvement and to all public works of improvement, except where
5 Section 10262 of the Public Contract Code applies.
6 (b) Except as provided in subdivision (c), a prime contractor or
7 subcontractor shall pay to any subcontractor, not later than ~~10~~
8 *seven* days of receipt of each progress payment, unless otherwise
9 agreed to in writing, the respective amounts allowed the contractor
10 on account of the work performed by the subcontractors, to the
11 extent of each subcontractor's interest therein. A prime contractor
12 or subcontractor that fails to comply with this subdivision shall be
13 subject to a penalty, payable to the subcontractor, of 2 percent of
14 the amount due per month for every month that payment is not
15 made as required under this subdivision.
16 (c) If there is a good faith dispute over all or any portion of the
17 amount due on a progress payment from the prime contractor or
18 subcontractor to a subcontractor, the prime contractor or
19 subcontractor may withhold no more than 150 percent of the
20 disputed amount.
21 (d) A violation of this section shall constitute a cause for
22 disciplinary action.
23 (e) In any action for the collection of funds wrongfully withheld,
24 the prevailing party shall be entitled to his or her attorney's fees
25 and costs.
26 (f) The sanctions authorized under this section shall be separate
27 from, and in addition to, all other remedies, either civil,
28 administrative, or criminal.
- 29 SEC. 2. Section 3252 of the Civil Code is amended to read:

1 3252. (a) With regard to a contract entered into on or after
2 January 1, 1995, in order to enforce a claim upon any payment
3 bond given in connection with a public work, a claimant shall give
4 the 20-day public works preliminary bond notice as provided in
5 Section 3098.

6 (b) ~~If~~ *With regard to a project completed on or before December*
7 *31, 2010, if* the 20-day public work preliminary bond notice was
8 not given as provided in Section 3098, a claimant may enforce a
9 claim by giving written notice to the surety and the bond principal
10 as provided in Section 3227 within 15 days after recordation of a
11 notice of completion. If no notice of completion has been recorded,
12 the time for giving written notice to the surety and the bond
13 principal is extended to 75 days after completion of the work of
14 improvement.

15 (c) *Commencing January 1, 2011, and except as provided in*
16 *subdivision (b), if the 20-day public works preliminary bond notice*
17 *was not given as provided in Section 3098, a claimant may enforce*
18 *a claim by giving written notice to the surety and bond principal,*
19 *as provided in Section 3227, prior to completion, as defined in*
20 *Section 3086, of the project, or recordation of a notice of*
21 *completion.*

22 SEC. 3. Section 10262 of the Public Contract Code is amended
23 to read:

24 10262. The contractor shall pay to his or her subcontractors,
25 within ~~10~~ *seven* days of receipt of each progress payment, the
26 respective amounts allowed the contractor on account of the work
27 performed by his or her subcontractors, to the extent of each
28 subcontractor's interest therein. The payments to subcontractors
29 shall be based on estimates made pursuant to Section 10261. Any
30 diversion by the contractor of payments received for prosecution
31 of a contract, or failure to reasonably account for the application
32 or use of the payments constitutes ground for actions proscribed
33 in Section 10253, in addition to disciplinary action by the
34 Contractors' State License Board. The subcontractor shall notify,
35 in writing, the Contractors' State License Board and the department
36 of any payment less than the amount or percentage approved for
37 the class or item of work as set forth in Section 10261.

38 SEC. 4. Section 10262.5 of the Public Contract Code is
39 amended to read:

1 10262.5. (a) Notwithstanding any other provision of law, a
2 prime contractor or subcontractor shall pay to any subcontractor,
3 not later than ~~10~~ *seven* days of receipt of each progress payment,
4 the respective amounts allowed the contractor on account of the
5 work performed by the subcontractors, to the extent of each
6 subcontractor's interest therein. In the event that there is a good
7 faith dispute over all or any portion of the amount due on a progress
8 payment from the prime contractor or subcontractor to a
9 subcontractor, then the prime contractor or subcontractor may
10 withhold no more than 150 percent of the disputed amount.

11 Any contractor who violates this section shall pay to the
12 subcontractor a penalty of 2 percent of the amount due per month
13 for every month that payment is not made. In any action for the
14 collection of funds wrongfully withheld, the prevailing party shall
15 be entitled to his or her attorney's fees and costs.

16 (b) This section shall not be construed to limit or impair any
17 contractual, administrative, or judicial remedies otherwise available
18 to a contractor or a subcontractor in the event of a dispute involving
19 late payment or nonpayment by a contractor or deficient
20 subcontract performance or nonperformance by a subcontractor.

21 (c) On or before September 1 of each year, the head of each
22 state agency shall submit to the Legislature a report on the number
23 and dollar volume of written complaints received from
24 subcontractors and prime contractors on contracts in excess of
25 three hundred thousand dollars (\$300,000), relating to violations
26 of this section.